

111TH CONGRESS  
2D SESSION

# H. R. 5330

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IN THE SENATE OF THE UNITED STATES

MAY 25, 2010

Received

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## AN ACT

To amend the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 to extend the operation of such Act, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. DELAY OF SUNSET.**

2 Section 211(a) of the Antitrust Criminal Penalty En-  
3 hancement and Reform Act of 2004 (Public Law 108-  
4 237; 15 U.S.C. 1 note) is amended—

5 (1) in subsection (a)—

6 (A) by inserting “of this subtitle” after  
7 “214”; and

8 (B) by striking “6 years” and inserting  
9 “16 years”; and

10 (2) by amending subsection (b) to read as fol-  
11 lows:

12 “(b) EXCEPTIONS.—With respect to—

13 “(1) a person who receives a marker on or be-  
14 fore the date on which the provisions of section 211  
15 through 214 of this subtitle shall cease to have ef-  
16 fect that later results in the execution of an anti-  
17 trust leniency agreement; or

18 “(2) an applicant who has entered into an anti-  
19 trust leniency agreement on or before the date on  
20 which the provisions of sections 211 through 214 of  
21 this subtitle shall cease to have effect,  
22 the provisions of sections 211 through 214 of this subtitle  
23 shall continue in effect.”.

1 **SEC. 2. DEFINITIONS.**

2 Section 212 of the Antitrust Criminal Penalty En-  
3 hancement and Reform Act of 2004 (Public Law 108–  
4 237; 15 U.S.C. 1 note) is amended—

5 (1) by redesignating paragraph (6) as para-  
6 graph (7); and

7 (2) by inserting after paragraph (5) the fol-  
8 lowing:

9 “(6) **MARKER.**—The term ‘marker’ means an  
10 assurance given by the Antitrust Division to a can-  
11 didate for corporate leniency that no other company  
12 will be considered for leniency, for some finite period  
13 of time, while the candidate is given an opportunity  
14 to perfect its leniency application.”.

15 **SEC. 3. TIMELINESS; COOPERATION AFTER TERMINATION**  
16 **OF STAY OR PROTECTIVE ORDER.**

17 (a) **TIMELINESS.**—Section 213(c) of the Antitrust  
18 Criminal Penalty Enhancement and Reform Act of 2004  
19 (Public Law 108–237; 15 U.S.C. 1 note) is amended to  
20 read as follows:

21 “(c) **TIMELINESS.**—The court shall consider, in mak-  
22 ing the determination concerning satisfactory cooperation  
23 described in subsection (b), the timeliness of the appli-  
24 cant’s or cooperating individual’s cooperation with the  
25 claimant.”.

1 (b) COOPERATION AFTER TERMINATION OF STAY OR  
2 PROTECTIVE ORDER.—Section 213 of the Antitrust  
3 Criminal Penalty Enhancement and Reform Act of 2004  
4 (Public Law 108–237; 15 U.S.C. 1 note) is amended by  
5 adding at the end the following—

6 (1) by redesignating subsection (d) as sub-  
7 section (e); and

8 (2) by inserting after subsection (c) the fol-  
9 lowing:

10 “(d) COOPERATION AFTER EXPIRATION OF STAY OR  
11 PROTECTIVE ORDER.—If the Antitrust Division does ob-  
12 tain a stay or protective order in a civil action based on  
13 conduct covered by an antitrust leniency agreement, once  
14 the stay or protective order, or a portion thereof, expires  
15 or is terminated, the antitrust leniency applicant and co-  
16 operating individuals shall provide without unreasonable  
17 delay any cooperation described in paragraphs (1) and (2)  
18 of subsection (b) that was prohibited by the expired or  
19 terminated stay or protective order, or the expired or ter-  
20 minated portion thereof, in order for the cooperation to  
21 be deemed satisfactory under such paragraphs.”.

22 **SEC. 4. TECHNICAL CORRECTIONS.**

23 Section 214 of the Antitrust Criminal Penalty En-  
24 hancement and Reform Act of 2004 (Public Law 108–  
25 237; 15 U.S.C. 1 note) is amended—

1           (1) in paragraph (1) by inserting “of this sub-  
2       title” after “213(b)”; and

3           (2) in paragraph (3)—

4                 (A) by inserting “of this subtitle” after  
5       “213(a)” the 1st place it appears; and

6                 (B) by striking “title” and inserting “sub-  
7       title”.

8   **SEC. 5. GAO REPORT.**

9       Not later than 1 year after the date of enactment  
10 of this Act, the Comptroller General shall submit, to the  
11 Committee on the Judiciary of the House of Representa-  
12 tives and the Committee on the Judiciary of the Senate,  
13 a report on the effectiveness of the Antitrust Criminal  
14 Penalty Enhancement and Reform Act of 2004, both in  
15 criminal investigation and enforcement by the Department  
16 of Justice, and in private civil actions. Such report should  
17 include study of, inter alia—

18           (1) the appropriateness of the addition of qui  
19       tam proceedings to the antitrust leniency program;  
20       and

21           (2) the appropriateness of creating anti-retalia-  
22       tory protection for employees who report illegal anti-  
23       competitive conduct.

1 **SEC. 6. EFFECTIVE DATE OF AMENDMENTS.**

2       The amendments made by section 1 shall take effect  
3 immediately before June 22, 2010.

4 **SEC. 7. BUDGETARY EFFECTS.**

5       The budgetary effects of this Act, for the purpose of  
6 complying with the Statutory Pay-As-You-Go Act of 2010,  
7 shall be determined by reference to the latest statement  
8 titled “Budgetary Effects of PAYGO Legislation” for this  
9 Act, submitted for printing in the Congressional Record  
10 by the Chairman of the House Budget Committee, pro-  
11 vided that such statement has been submitted prior to the  
12 vote on passage.

Passed the House of Representatives May 24, 2010.

Attest:                   LORRAINE C. MILLER,  
*Clerk.*

By DEBORAH M. SPRIGGS,  
*Deputy Clerk.*